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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SA CV 08-0754-AG (ANx)	Date	September 22, 2008
Title	CATHY REIS “DBA CPS” v. STEVEN D’BRAUNSTEIN and DOES 1 through 50, inclusive		

Present: The
Honorable

ANDREW J. GUILFORD

Lisa Bredahl

Not Present

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Proceedings: [IN CHAMBERS] ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION

Defendant Steven D’Braunstein (“Defendant”) filed a Motion to Dismiss Action Pursuant to 28 U.S.C. § 1332 [sic] Due to Lack of Jurisdiction of Proceedings (the “Motion”).

The Court considers this case appropriate for ruling without a hearing. The Court VACATES the hearing set for September 29, 2008. After considering the parties’ arguments, the Court GRANTS the Motion with leave to amend. If Plaintiff wishes to file an amended complaint, she must do so no more than 21 days from today.

BACKGROUND

The Court assumes as true the facts as stated in the Complaint, with additional facts provided by the Motion. *Pro se* plaintiff Cathy Reis “dba CPS” (“Plaintiff”) filed a complaint against Headlands Mortgage Company (“Headlands”) in the Superior Court of California for, among other things, copyright infringement. (Complaint 4:19-25.) Plaintiff retained the law firm of Kolodney & Pressman (“Kolodney”). (*Id.*) Headlands

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won on summary judgment. (*Id.* 5:1.) Plaintiff started a malpractice arbitration against Kolodney. (*Id.* 5:6-9.) At first she was *pro se*. (Motion 3:14-15.) She later hired Defendant. (*Id.*) Before the matter was heard, the Arbitrator relieved Defendant as counsel of record. (*Id.* 3:16-17.) The Arbitrator found for Kolodney and awarded fees to Kolodney. (*Id.* 3:17-22.)

Plaintiff filed a complaint for negligence against Defendant in the California Superior Court. (*Id.* 3:22-24.) Defendant won on summary judgment. (*Id.* 4:17-18.) Plaintiff appealed to the California Court of Appeal but later voluntarily dismissed the appeal. (*Id.* 4:24-5:2.) Plaintiff filed against Defendant the instant Complaint for Copyright Infringement, Failure to Protect Copyright, Negligence, Slander, Intrinsic and Extrinsic Fraud (the “Complaint”).

LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(1) provides for dismissal of a complaint for lack of subject matter jurisdiction. Because federal courts are courts of limited jurisdiction, it is “presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Vacek v. United States Postal Serv.*, 447 F.3d 1248, 1250 (9th Cir. 2006) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted)). Dismissal without leave to amend is appropriate only when the Court is satisfied that the deficiencies of the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003) (citing *Chang v. Chen*, 80 F.3d 1293, 1296 (9th Cir. 1996)); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000); *Polich v. Burlington N., Inc.*, 942 F.2d 1467, 1472 (9th Cir. 1991).

ANALYSIS

1. Delay

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Plaintiff argues that the Court should not hear the Motion because Defendant waited too long to bring it. (Opposition 3:11-21.) The Court disagrees. Because it affects the court’s very power to adjudicate, delay in raising lack of subject matter jurisdiction does not waive the ground. Fed. R. Civ. P. 12(h)(3). The objection can be raised initially at trial, or even on appeal. *Id.*

2. 28 U.S.C. § 1331

Defendant argues that the Complaint fails to allege a claim against Defendant under 28 U.S.C. § 1331. (Motion 6:3-6.) The Court agrees. Plaintiff’s only federal claim is a claim for copyright infringement. The Complaint alleges that many parties infringed Plaintiff’s copyright, but Defendant is not one of them. (Complaint 2:24-3:9.) Plaintiff fails to allege a federal claim against Defendant, so this Court does not have subject matter jurisdiction to hear this action.

DISPOSITION

The Court GRANTS the Motion with leave to amend. If Plaintiff wishes to file an amended complaint, she must file it no more than 21 days from today.

Initials of
Preparer

_____ : _____
lmb